

**ORIGINAL**

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter off

Revision of the Commission's Rules  
To Ensure Compatibility with  
Enhanced 911 Emergency Calling Systems

CC Docket No. 94-102

**COMMENTS OF SBC WIRELESS, INC.****I. INTRODUCTION**

SBC Wireless Inc., on behalf of Pacific Bell Mobile Services, Southwestern Bell Mobile Systems, Inc., and Southwestern Bell Wireless Inc., (collectively "SBC") hereby comments on the request of the State of California 9-1-1 Program Manager for an Emergency Declaratory Ruling ("California Request") on issues relating to the implementation of the E911 Phase I requirements pursuant to the Public Notice released on July 30, 1998.<sup>1</sup>

In its letter to the FCC, the State of California 9-1-1 Program Manager requested an immediate ruling on the following three issues:

1. Whether carriers have an obligation to deploy wireless E911 service (Phase I) in California despite the fact that the state statute does not provide immunity from liability for the E911 service provider.
2. Whether the State is required to reimburse carriers for the cost of insurance policies covering E911 service in the absence of immunity from liability.

<sup>1</sup> Wireless Telecommunications Bureau Seeks Comment on Request for an Emergency Declaratory Ruling Filed Regarding Wireless Enhanced 911 Rulemaking Proceeding, Public Notice, CC Docket No. 94-102, released July 30, 1998.

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3. Whether routing to the "appropriate PSAP" preempts California law which requires that wireless 911 calls be routed to the California Highway Patrol.<sup>2</sup>

**II. THE REQUEST FROM CALIFORNIA POINTS OUT THE NEED FOR THE COMMISSION TO REEXAMINE ITS POSITION ON THE PREEMPTION OF STATE LAW WITH RESPECT TO A LIMITATION OF LIABILITY FOR E911 CALLS.**

The lack of liability protection for wireless carriers has always been a concern to SBC. In the past, SBC has filed comments on this issue requesting that the Commission adopt the following limitation of liability provision:

A wireless carrier shall not be liable for any form of damages resulting directly or indirectly from the total or partial failure of any transmission or information to an emergency telephone service.<sup>3</sup>

The Commission responded in its Memorandum Opinion and Order that it is premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems.

The State of California's request for guidance on the issue of liability demonstrates that the problem has not gone away in those states in which the legislature has failed to give wireless carriers the same liability protection for the transmission of 911 calls that wireline carriers have. California is one of the 17 states that has not provided protection to wireless carriers even though other carriers are afforded such protection. Most recently, the California Assembly considered Assembly Bill 909, which if enacted, would permit the routing of wireless calls in accordance with FCC rules and

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<sup>2</sup> California Request.

<sup>3</sup> Additional comments of Southwestern Bell Mobile Systems, Inc., CC Docket No. 94-102, p. 9, March 4, 1996, see also Petition for Reconsideration and/or Clarification, September 3, 1996, pp. 8-11.

would provide CMRS providers with a limitation of liability for 911 traffic. The limitation of liability provisions were deleted in committee and the bill has since died.

Although SBC takes steps to limit its liability for 911 calls in its contracts, the FCC's mandate to transmit all 911 calls, even those from non-subscribers, creates an even greater risk of liability. The Commission has acknowledged this problem in the past.

We recognize, however, petitioners' claim that they cannot contractually insulate themselves from liability when non-subscribers use their systems. Because covered carriers are required to transmit 911 calls from all handsets regardless of subscription, we agree with SBMS that it would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier's terms and conditions for liability.<sup>4</sup>

It is difficult to imagine how a contractual limitation of liability can be imputed to a party not in privity with the providing carrier.

As the California request demonstrates, the lack of liability protection can have a delaying effect on the implementation of the Phase I requirements. See attached article from the San Jose Mercury News.<sup>5</sup> The Commission should act quickly. The Commission should either adopt a national standard along the lines previously recommended by SBC, or it should make it clear that its 911 requirements cannot be used

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<sup>4</sup> In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd 22665, para. 140 (1997).

<sup>5</sup> Although the article claims that Pacific Bell Mobile Services is undeterred by the liability issue, that statement out of context creates an inaccurate impression. Pacific Bell Wireless (formerly Pacific Bell Mobile Services) has agreed to go forward with the test but the liability issue remains a serious concern.

as the basis for liability in any civil action. At this time, such action is neither premature, nor speculative. State law that does not provide liability protection for wireless carriers is thwarting the federal purpose in the FCC's E911 proceeding of promoting the rapid deployment of E911 capabilities of wireless carriers.

**III. LIABILITY PROTECTION, NOT INSURANCE REIMBURSEMENT, IS THE BEST SOLUTION.**

The 9-1-1 Manager for the State of California also raises the issue of whether it should be required to reimburse the wireless carriers for the costs of insuring against loss associated with the transmission of 911 calls.<sup>6</sup> The State notes that the cost of such reimbursement are so significant that E911 service will not be deployed statewide in California.<sup>7</sup> SBC views insurance and insurance reimbursement as a costly alternative that diverts attention from the most appropriate solution, provision of liability protection.

**IV. CONCLUSION.**

SBC urges the Commission to use this opportunity to revisit its decision on liability protection for wireless carriers and create a national limitation of liability for wireless carriers or include language in its regulations specifically stating that its 911 requirements cannot be used as a basis for liability in any civil action.

(SIGNATURE PAGE FOLLOWS)

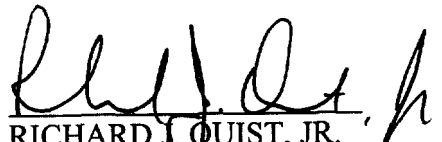
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<sup>6</sup> California Request, p. 1.

<sup>7</sup> Id. at p. 2.

Respectfully submitted,

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August 14, 1998

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## Local & State

*Published Wednesday, August 5, 1998, in the San Jose Mercury News*

# 911 improvements hung up

**Mobile-phone companies fear liability suits****BY JON HEALEY**

Mercury News Staff Writer

Some mobile-phone companies' concerns about lawsuits are casting a cloud over improvements to California's 911 system, particularly the ability of local dispatchers to take wireless calls directly and ring back people in distress.

Unlike regular phones, a mobile handset doesn't automatically tell 911 dispatchers the caller's phone number. Mobile-phone companies, under an order by the Federal Communications Commission, were required to provide such a feature by April, but no state has gotten past the testing stage.

The problem in California isn't the technology -- it's a combination of legal and financial issues. Foremost among them are whether the mobile-phone companies will be liable for injuries suffered if a wireless 911 call doesn't go through, and if so, who will cover the cost of the companies' liability insurance.

Temporarily stymied by these issues, state 911 program officials asked federal regulators last month for an emergency ruling declaring whether the companies could be forced to make the improvements even if they weren't immune from lawsuits. The state also asked whether the companies could bill the public for their insurance.

The Federal Communications Commission is expected to rule on the request later this year.

In the meantime, California officials have begun testing improvements to the wireless 911 system near Los Angeles. Industry officials predicted that it would take at least six months before the upgrades start to reach the Bay Area.

**Notable failures**

purpose of holding the companies liable if they did not have to pay the insurance premiums.

#### Widespread immunity

Thirty-three states already grant wireless carriers immunity from liability on 911 calls, said Tim Ayers, a spokesman for the industry's national trade association. The House Commerce Committee is expected to approve a bill today that could extend that immunity to all 50 states, but the bill's chances of becoming law appear dim because little time is left in the 1998 session.

Josh King, senior counsel for Cellular One in the Bay Area, said that the system improvements have yet to be introduced in Northern California because local public-safety officials have not asked for them. He added that state officials want to finish the test before trying the technology elsewhere.

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